

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

OCT 2 1 2003

REPLY TO THE ATTENTION OF (AE-17J)

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Frederick S. Mueller Johnson & Bell, Ltd. Suite 4100 55 East Monroe Street Chicago, Illinois 60603

Re: Hilton Hotels Corporation

U.S. EPA Docket No.

CAA-05- 2004 0 0 0 1

Dear Mr. Mueller:

Please direct any questions regarding this case to Eaton R. Weiler, Associate Regional Counsel, (312) 886-6041.

Sincerely yours,

William L. MacDowell, Chief

Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

IN THE MATTER OF:)	Docket No.	CAA-05	2004	0001
Hilton Hotels Corporation, Chicago, Illinois)))	Consent Agre	emen tänd l	Final Or	der R R G
Respondent.)		REGION	OCT 21	RECE
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CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

- 1. The United States Environmental Protection Agency (U.S. EPA) and Hilton Hotels Corporation agree to settle this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).
- 2. Complainant, the Director of the Air and Radiation Division, U.S. EPA, Region 5, brings this administrative action seeking a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42. U.S.C. 7413(d).
- 3. The Respondent is Hilton Hotels Corporation as owner and operator of the Hilton Chicago hotel located at 720 South Michigan Avenue, Chicago, Illinois, (Hilton or Respondent) doing business in Illinois.

II. REGULATORY BACKGROUND

- 4. The U.S. EPA promulgated the standards for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82 (Stratospheric Ozone Standards) pursuant to Section 608 of the Clean Air Act, 42. U.S.C. § 7671g.
- 5. The Stratospheric Ozone Standards, Subpart F, apply to any person servicing, maintaining, repairing, or owning appliances, as those terms are defined at 40 C.F.R. § 82.152.
- 6. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(5), require that an owner or operator of a comfort-cooling refrigeration appliance normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. Repairs must bring the annual leak rate of the appliance to below 15 percent.
- 7. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(9), require that an owner or operator of a comfort-cooling refrigeration appliance must repair leaks pursuant to 40 C.F.R. § 82.156(i)(5) within 30 days after discovery of the leak.
- 8. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(6), require that an owner or operator of a comfort-cooling refrigeration appliance develop a one-year retrofit and retirement plan within 30 days of a failure to repair a leaking appliance to below the allowable leak rate. The plan must be kept at the site of the appliance.
- 9. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(6), require that an owner or operator of a comfort-cooling refrigeration appliance retrofit or retire comfort-cooling refrigeration appliance within one year of a failure to repair leaking appliance below the allowable leak rate.

III. FACTUAL ALLEGATIONS

- 10. Hilton is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e), and owns and operates the Chicago Hilton hotel located at 720 South Michigan Avenue, Chicago, Illinois.
- 11. The hotel includes the comfort-cooling refrigeration appliance S007 A/C Will/BLVD that contains a normal charge of over 50 pounds.
- 12. The comfort-cooling refrigeration appliance S007 A/C Will/BLVD uses the class II refrigerant R-401A. The commercial name for R-401A is MP-39.
- 13. The comfort-cooling refrigeration appliance S007 A/C Will/BLVD experienced leaks during the time between September 9, 1999 and December 11, 2000, that resulted in an annual leak rate exceeding 15 percent.
- 14. Repairs performed on the following dates did not result in the annual leak rate of the comfort-cooling refrigeration appliance S007 A/C Will/BLVD being returned to below 15 percent:
 - A. September 22, 1999,
 - B. October 25, 1999,
 - C. February 28, 2000, and
 - D. May 5, 2000.
- 15. Hilton did not develop retrofit or retirement plans for the comfort-cooling refrigeration appliance S007 A/C Will/BLVD when the repairs performed on September 22, 1999, were unable to bring the leak rate to below 15 percent.

16. Hilton did not retrofit or retire the comfort-cooling refrigeration appliance S007 A/C Will/BLVD when repairs performed on September 22, 1999, were unable to bring the leak rate to below 15 percent.

IV. ALLEGED VIOLATIONS

- 17. Hilton is in violation of 40 C.F.R. § 82.156(i)(5) and Section 608 of the Act,
 42 U.S.C. § 7471g, for failing to repair the comfort-cooling refrigeration appliance S007 A/C
 Will/BLVD such that the annual leak rate was brought below 15 percent.
- 18. Hilton is in violation of 40 C.F.R. § 82.156(i)(6) and Section 608 of the Act, 42 U.S.C. § 7471g, for failing to develop a one-year retrofit and retirement plan for comfort-cooling refrigeration appliance S007 A/C Will/BLVD following the failure to repair the appliance.
- 19. Hilton is in violation of 40 C.F.R. § 82.156(i)(6) and Section 608 of the Act,
 42 U.S.C. § 7471g, for failing to retrofit or retire comfort-cooling refrigeration appliance S007
 A/C Will/BLVD following the failure to repair the appliance.

V. TERMS OF SETTLEMENT

A. Stipulations

- 20. "Parties" shall mean U.S. EPA and Hilton.
- 21. The parties consent to the terms and conditions of this Consent Agreement and Final Order (CAFO).
- 22. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

- 23. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
- 24. Hilton admits the jurisdictional allegations in the CAFO and neither admits nor denies the factual allegations in this CAFO.
- 25. Hilton waives its right to an administrative or judicial hearing on any issue of law or fact set forth in the CAFO and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).
- 26. Hilton certifies that, to the best of its knowledge, information, and belief, formed after reasonable inquiry under the circumstances, it is complying fully with the Stratopsheric Ozone Standards at its Chicago Hilton hotel.
- 27. Hilton consents to the issuance of this CAFO, the assessment of a civil penalty and the performance of the Non-Ozone-Depleting Refrigerant Replacement Project, as outlined in Sections V(B) and (C) of this CAFO.
- 28. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 608 of the Act, 42 U.S.C. §§ 7671g, for the violations alleged in Section IV of this CAFO.

B. Civil Penalty

29. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into consideration the following factors: Hilton's agreement to perform the Non-Ozone-Depleting Refrigerant Replacement Project (as outlined below), Hilton's efforts to cooperate, the size of Hilton's business, the economic impact of the penalty on Hilton's business, Hilton's full compliance history and good faith efforts to comply,

the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors U.S. EPA agrees to mitigate the proposed penalty of \$33,000 to \$5,000.

30. Hilton must pay the \$5,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 31 and 32 below, within thirty days (30) of the effective date of this CAFO.

31. Hilton must send the check to:

U.S. Environmental Protection Agency Region 5 P.O. Box 70753 Chicago, Illinois 60673

32. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Eaton R. Weiler, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

- 33. This civil penalty is not deductible for federal tax purposes.
- 34. If Hilton does not pay timely the civil penalty, or any stipulated penalties due under paragraph 44, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
- 35. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Hilton will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Hilton will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

C. Non-Ozone-Depleting Refrigerant Replacement Project

- 36. At its Chicago Hilton hotel, Hilton must complete the Non-Ozone-Depleting Refrigerant Replacement Project (Refrigerant Replacement Project) as follows:
 - a. Hilton shall replace the following existing units, which use refrigerant R-12, with new units which use the non-ozone-depleting refrigerant R-134a:
 - A. Grand Ballroom Wine Cooler; and
 - B. Two (2) Carlyle SF40-149 Compressors serving the training room.

- b. Installation and proper working operation of the specified units shall constitute the completion of the Refrigerant Replacement Project;
- c. The Refrigerant Replacement Project shall be completed within twelve (12) months of the effective date of this CAFO; and
- d. The specified units shall not use, or be capable of using, any Class I or Class II refrigerant, or blend thereof.
- 37. Hilton must spend at least \$20,000 in the performance of this Refrigerant Replacement Project.
- 38. Hilton must submit a Refrigerant Replacement Project completion report to U.S.

 EPA within thirteen (13) months of the effective date of this CAFO or within thirty (30) calender days of the completion of the Refrigerant Replacement Project, which ever date occurs first.

 This report must contain the following information:
 - a. detailed description of the Refrigerant Replacement Project as completed;
 - b. description of any operating problems and the actions taken to correct the problems;
 - c. itemized costs of goods and services used to complete the Refrigerant
 Replacement Project documented by copies of invoices, purchase orders, or
 canceled checks that specifically identify and itemize the individual costs of the
 goods and services;
 - d. certification that Hilton has completed the Refrigerant Replacement Project in compliance with this CAFO; and

- e. description of the environmental and public health benefits resulting from the Refrigerant Replacement Project (quantify the benefits and pollution reductions, if feasible).
- 39. Hilton must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

40. In each report that Hilton submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- 41. Following receipt of the Refrigerant Replacement Project completion report described in paragraph 38 above, U.S. EPA must notify Hilton in writing that:
 - a. It has satisfactorily completed the Refrigerant Replacement Project and the Refrigerant Replacement Project report;
 - b. There are deficiencies in the Refrigerant Replacement Project as completed, or in the Refrigerant Replacement Project report, and U.S. EPA will give Hilton 30 days to correct the deficiencies; or

- c. It has not satisfactorily completed the Refrigerant Replacement Project, or the Refrigerant Replacement Project report, and U.S. EPA will seek stipulated penalties under paragraph 43.
- 42. If U.S. EPA exercises option b. above, Hilton may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Hilton's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Hilton a written decision on its objection. Hilton will comply with any requirements that U.S. EPA imposes in its decision. If Hilton does not complete the Refrigerant Replacement Project as required by U.S. EPA's decision, Hilton will pay stipulated penalties to the United States under paragraph 43 below.
- 43. If Hilton violates any requirement of this CAFO relating to the Refrigerant Replacement Project, Hilton must pay stipulated penalties to the United States as follows:
 - a. Except as provided in subparagraph b, below, if Hilton did not complete the Refrigerant Replacement Project satisfactorily according to this CAFO, Hilton must pay a stipulated penalty of \$20,000.
 - b. If Hilton did not complete the Refrigerant Replacement Project satisfactorily, but U.S. EPA determines that Hilton: (i) made good faith and timely efforts to complete the Refrigerant Replacement Project; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the Refrigerant Replacement Project, Hilton will not be liable for any stipulated penalty.

- c. If Hilton satisfactorily completed the Refrigerant Replacement Project, but spent less than 90 percent of the required amount on the Refrigerant Replacement Project, Hilton must pay a stipulated penalty of \$2000.
- d. If Hilton failed to submit timely the Refrigerant Replacement Project completion report required by paragraph 38 above, Hilton must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.
- e. If Hilton failed to submit timely any other report required by paragraph 36 above, Hilton must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.
- 44. U.S. EPA's determinations of whether Hilton satisfactorily completed the Refrigerant Replacement Project and whether it made good faith, timely efforts to complete the Refrigerant Replacement Project will bind Hilton.
- 45. Hilton must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Hilton will use the method of payment specified in paragraphs 31 and 32, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.
- 46. Any public statement that Hilton makes referring to the Refrigerant Replacement Project must include the following language, "Hilton undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Hilton for violations of the Stratospheric Ozone Standards at its Chicago Hilton hotel."
- 47. Any written correspondence from the U.S. EPA to Hilton concerning this CAFO shall be sent to:

Ed Ray
Director of Property Operations
Hilton Chicago
Hilton Hotels Corporation
720 South Michigan Avenue
Chicago, Illinois 60605

Frederick S. Mueller Johnson & Bell, Ltd. Suite 4100 55 East Monroe Street Chicago, Illinois 60603

D. General Provisions

- 48. Nothing in this CAFO restricts U.S. EPA's authority to seek Hilton's compliance with the Act and other applicable laws and regulations.
- 49. This CAFO does not affect Hilton's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.
- 50. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Hilton's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
 - 51. The terms of this CAFO bind Hilton, and its successors, and assigns.
- 52. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
- 53. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.
 - 54. This CAFO constitutes the entire agreement between the parties.

55. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

> U.S. Environmental Protection Agency, Complainant

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Cheryl L. Newton, Acting Director

Air and Radiation Division U.S. Environmental Protection Agency, Region 5 (A-18J)

Hilton Hotels Corporation, Respondent

John Dent, Vice President and Senior Counsel

Hilton Hotels Corporation

CAA-05- 2004 0001

CONSENT AGREEMENT AND FINAL ORDER Hilton Hotels Corporation CAA-05- 2004 0 0 1 Docket No.

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Thomas V. Skinner

Regional Administrator

U.S. Environmental Protection

Agency, Region 5

77 West Jackson Boulevard Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05- 2004 0001 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Hilton Hotels Corporation by placing them in the custody of the United States Postal Service addressed as follows:

Frederick S. Mueller Johnson & Bell, Ltd. Suite 4100 55 East Monroe Street Chicago, Illinois 60603

Ed Ray, Director of Property Operations REGIONS REGION

on the <u>215T</u> day of <u>October</u>, 2003.

Loretta Shaffer, Secretary AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 700/0320 0006 1467 1084